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# **BASIC MEDICAID PLANNING FROM APPLICATION TO RECOVERY**

**Strategies for Helping the  
Medicaid Applicant Protect  
Assets**

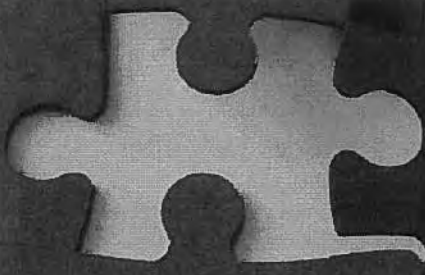
**Presented By:**

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# Elder Law: Medicaid


Strategies for Helping the Medicaid Applicant Protect Assets



Presented by Williger Legal Group LLC

## BIO

- Double graduate of the Ohio State University
- Founding Partner at Williger Legal Group LLC
- Areas of Practice Include:
  - Estate Planning
  - Estate Administration
  - Guardianship
  - Long Term Care



## Public Benefits Overview

- **Entitlement Benefits:** Provided because a worker has paid into the Social Security System.
  - Doesn't matter what assets or income he may have.
- **Welfare Benefits:** Based on a person having a medical and financial need.
  - May be kicked off if they receive a financial windfall

	Entitlement	Welfare
Income	Social Security Disability Insurance (SSDI)	Supplemental Security Income (SSI)
Medical	Medicare	Medicaid

## What is Medicaid?

- Medicaid is a welfare program that pays for health care for indigent people
- The nation's primary source of health insurance coverage
- Both federally and state funded
- Varies significantly from state to state
- In August 2016, Ohio switched from a 209(b) Medicaid state to a 1634 Medicaid state

## Three Main Rules of Medicaid

**#1 You Pay First.**

**#2 If you had the money, and you gave it away, you should have used it to pay for your care.**

**#3 If you have anything left over when you die, the state wants paid back.**

## Requirements

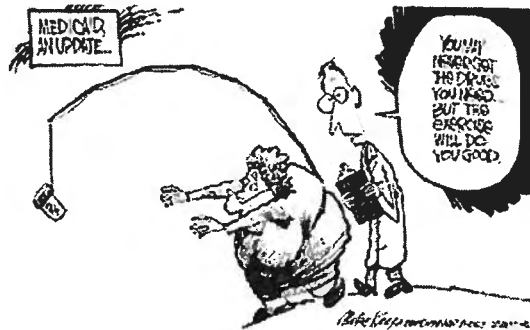
- In order to qualify for Medicaid you must meet all four main requirements:
  - Residency
  - Level of Care Needed
  - Income Eligibility
  - Asset Limits
  
- As of August 2016, SSI recipients automatically are eligible for Medicaid

## Financial Requirements

First must ask what applicant's interest is?

- Interests are treated differently depending on what they are:

- Income
- Exempt Assets
- Countable Assets
- Unavailable
- Debts
- Gifts



## Income

- A person may be ineligible for Medicaid if income is too high.
- 2016 earning no more than \$2,199 per month for one person.
- If Income is over this limit must establish a Qualified Income Trust (QIT), commonly referred to as a Miller Trust. (Later discussed)
- If income is in account for over a month becomes an "asset"

## Exempt Assets

- The Family Home
- Personal Property
- One automobile
- Life insurance policy
  - < \$1,500 cv
- Prepaid Funerals & Burial Spaces
  - (applicant & immediate family)
- Rarely can keep spousal retirement accounts

\*\*\*Restrictions Apply

## The Family Home

- House no longer has 13 month period of exemption
  - House is exempt if “intent to return”
- Home is exempt if “dependent relative” continues to reside in home
- 90% of fair market value is no longer in statute (many still using) but Federal Law says 2/3
- Caretaker child exemption still in available

## Countable Assets

- Any Assets That Are Not Exempt
- Countable Assets must be less than \$1,500 (old rule)
- Countable Assets raised to \$2,000 under the new rules

## Countable Assets Examples

- Certificates of deposit
- U.S. Savings Bonds
- Individual Retirement Accounts (IRAs)
- Keogh Plans (401K, 403B)
- Nursing home accounts
- Prepaid funeral contracts that are cancellable
- Trusts
- Real estate other than the primary residence
- Additional cars, after the first vehicle
- Boats
- Recreational vehicles
- Stocks, bonds and mutual funds
- Land contracts
- Mortgages held on real estate sold



## Unavailable Assets

- Unavailable Assets are assets that are technically countable assets but cannot be accessed.
- Example: A piece of land that is land locked that the person owns, and has listed on the market, but is unsellable currently.
- New Changes: Real property listed for sale no longer exempt (arguably in Fed program you have 9 months to attempt to sell)

## Debts

- One way to spend down to the \$2,000 limit is to pay off debts such as mortgages, credit cards etc.
- Medicaid Recipient can pay **ONLY FOR HER OWN DEBTS** or spouse

## Easiest Plan

- Straight spend down
- Spend money on care and items for person going into the nursing home
- Try to put money where it will do the most good while you can (prepaid funerals, debts, things for person, etc)
- No gifts!

## Spousal Protections

- When there's a spouse the question becomes how do we make the institutionalized spouse poor enough to qualify for Medicaid without impoverishing the community spouse?

## Snap Shot Date

- The date which the institutionalized spouse enters a hospital or LTC facility and stays for at least 30 days (or the day they apply for medicaid, whichever comes first) is the “Snapshot date”
- On this date they take a “picture” of the countable assets and split it in half. The community spouse gets to keep her half (with limitations) and the spousal half has to be spent down to \$1500

## Spousal Limits

- Spouse Can keep ALL HER income plus possibly some of the institutionalized spouse’s
- Community Spouse Monthly Income Allowance:
  - Minimum Monthly Maintenance Needs Allowance: \$1,967
  - Maximum Monthly Maintenance Needs Allowance: \$2,981
- Community Spouse Asset Allowance:
  - Minimum Community Spousal Resource Allowance: \$23,844
  - Maximum Community Spouse Resource Allowance: \$119,220

## Simplest Spousal Plan

- Make sure you have most assets possible on snapshot date
- Split assets
- Spend institutionalized spouse's share on debts, and improvements to exempt assets for spouse
- Make no gifts

## Gifts

- Gifts are not "illegal" but are considered "improper"
- Five Year Look Back Period from date you apply for Medicaid
- If gifts were made, person is placed on "Restricted Medicaid" for a length of time known as the "penalty period"



"Your honor, before we get into the issue of black and white, I'd like permission to slip into my grey suit."

## Penalty Period

- Penalty Period is based on the amount of the gift (One month penalty every \$6,327)
- During penalty period Medicaid covers medical expenses but not LTC care (billed at Medicaid rate)
- Until time is up, you must find another way to pay for your care.

## Estate Recovery

- If you die and you have assets remaining, and you were on Medicaid, those assets have to go to pay the state back the cost they paid out
- Liens on house
- Can sometimes be bargained with the officer in private agreement.

## Hypothetical Andrew

Client & Family	Andrew, 90 y/o single man with 2 children.
Health	Had a fall which put him in a wheel chair. Not able to cook or clean for himself. Some dementia. Needs full time care.
Income	Social Security: \$1,925 Pension: \$300 RR income: \$75 <b>Total: \$2,300</b>
Assets	Checking joint with daughter: \$15,000 Car: \$7,500
Other Factors:	He has no POA, guardian, or will. He has lived in his daughter's house up until his fall. His son is disabled.

## Recommended Actions for Andrew

- Have Andrew appoint POA if possible.
- Prepay Funeral (\$10,000)
- Pay Attorney Fees (\$2,500)
- Buy anything client may need (\$500)
- Keep car for transportation or
  - (better) Gift car to disabled son (if it does not disturb his benefits)
- Set up QIT to receive extra income so he qualifies for Medicaid

## Hypothetical Bill

Client & Family	Bill (78) married to Betty (77). No kids.	
Health	Car accident left Bill paralyzed from the neck down. Betty would like to keep him at home, modify and have services in home.	
Income	<u>Bill's Income</u> Social Security: \$1800 Pension: \$75  <b>Total: \$1,875</b>	<u>Betty's Income</u> Social Security: \$1,750 Pension: \$ 1500 VA: \$500  <b>Total: \$3,750</b>
Assets	Home: \$150,000 Van: \$40,000 Betty's IRA: \$150,000 Betty's 401K: \$50,000 Bill's ROTH IRA: \$10,000	Joint Checking: \$25,000 Joint Savings: \$75,000 Joint Brokerage Account: \$200,000 Betty's Whole Life Insurance: \$50,000 Bill's Term Life Insurance: \$100,000
Other Factors:	There may be a large insurance settlement payment for the car accident. When/if it comes, half would go to Bill for injuries and half to Betty for loss of consortium.	

## Recommended Actions for Bill

- No QIT needed!
- Betty gets to keep the house, car, her retirement funds (OAC §5160:1-3-03.10, §5160:1-3-05.20), plus \$119,220 (maximum spousal split)
- Spend down the excess \$238,780 to qualify for Medicaid
- Prepay Funerals for both spouses (\$20,000)
- Pay Attorney Fees (\$15,000)
- Invest in improvements on exempt assets, pay debts & purchase anything needed (\$53,780)
- Set up Pooled Trust for Bill fund with excess (\$150,000)
- Be on PASSPORT by the time the insurance settlement comes. Put Bill's half in pooled trust.

## Hypothetical Clara

Client & Family	Clara, 81 y/o widowed woman with 3 sons in Ohio. Oldest son is POA. Will leaves everything to kids equally.
Health	Has had a few falls recently, bipolar and dementia. Needs full time care.
Income	Social Security: \$1,497 Pension: \$255 <b>Total: \$1,750</b>
Assets	Checking: \$25,000 IRA: \$75,000 Brokerage: \$60,000
Other Factors:	She has been living in an independent living up until this point. In 2014 she made a \$30,000 gift to her children. She has no debt.

## Recommended Actions for Clara

- Prepay Funeral (\$10,000)
- Pay Attorney Fees (\$5,000)
- Buy anything client may need, withhold for taxes and pay debts. (\$10,000)
- POA gifts brokerage account \$60,000 to 3 children (with past gift, gift totals \$90,000 creating a penalty period of 15 months)
- POA uses IRA to purchase a Medicaid Qualified Annuity to cover gifting period (needs extra \$4575 a month with current income)
- Set up QIT to receive extra income from IRA



### Hypothetical Donna

Client & Family	Donna 88 y/o divorcee. Has three children.
Health	Developed Parkinson's disease six years ago, and it has progressed. She now needs full time care and can no longer communicate.
Income	Social Security: \$2,500 <span style="float: right;"><b>Total: \$2,500</b></span>
Assets	Home: \$75,000 (-\$25,000 mortgage) Checking: \$2,000 Savings: \$20,000
Other Factors:	In 2012 Donna's oldest daughter moved into Donna's home to help. She now is living there with nowhere to go. The three children do not get along. There is no will, no power of attorney and no guardianship

- ### Recommended Actions for Donna
- Need to bring a guardianship action to get ability to handle finances.
  - Prepay Funeral (\$2,500)
  - Pay Attorney Fees (\$10,000)
  - Set up QIT to receive income
  - Can do caretaker child exempt transfer
  - Can daughter handle mortgage
  - House exempt if a dependent is living there
  - Other children may object

## CONTACT INFORMATION

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